

Malta's Transposition of the Alternative Investment Fund Managers Directive

The Alternative Investment Fund Managers Directive (AIFMD) applies to the marketing or management of alternative investment funds (AIFs) in Europe. The Directive seeks to regulate the non-UCITS fund sector, in particular hedge funds, private equity, real estate, infrastructure and investment trusts.

On 27 June 2013, the MFSA launched the new Investment Services Rulebooks which include the new parts regulating Alternative Investment Fund Managers (AIFMs) and Alternative Investment Funds. This publication of the final implementing measures of the directive makes Malta one of the first implementing jurisdictions. Moreover, the MFSA is now accepting applications for licences for managers which wish to be authorised as AIFMs.

Hereunder is an outline of the salient implementing measures further to an initial review:

Use of transitional periods by Malta

Malta is availing itself of the following transitional periods made available in terms of the AIFMD:

i) Transitional period for existing licence holders:

a full 1 year transitional period until 22 July 2014 is available for existing fund managers and self-managed funds to upgrade their licence into full AIFMs / self-managed AIFs or de minimis AIFMs. Existing licence holders are to complete the self-assessment forms (find attached as Self-Assessment Forms) and submit them to the Authority by 31 March 2014.

ii) Third country services arrangements:

non-EU fund managers may continue to manage / market without a passport non-EU AIFs / EU AIFs without requiring full AIFMD compliance until 2015.

iii) Depositary arrangements:

The MFSA has negotiated a derogation at EU level which has been incorporated in the AIFMD and which will allow Malta-based AIFs and AIFMs to make use of the services of an AIFMD-compliant depositary based in another EU or EEA Member State until 22 July 2017.

Introduction of new Malta Alternative Investment Fund Regime alongside PIF Regime

Alongside the successful Maltese Professional Investor Fund regime, which has been retained, refined and will remain available to de minimis fund managers, non-EU AIFMs and EU AIFMs, a new AIF regime has been launched. The new AIF regime will mainly apply to funds managed by “sub-threshold” AIFMs which are not required to be licensed under the Directive, funds managed by AIFMs which are in full compliance with the Directive, and AIFMs based outside the EU, which are, for the time being, not required to be authorised under the AIFMD.

Passporting of ancillary services by AIFMs

If requested by a manager, the MFSA has confirmed that it will include the additional investment services, including discretionary portfolio management on a client-by-client basis, in the passport notifications it will make to host EU member states.

Delegation

The MFSA has indicated that it will allow certain portfolio and risk management tasks to be delegated (including partial delegation of both activities) in accordance with the AIFMD’s restrictions, and that it will determine the extent of the delegation permitted on a review of each proposed delegation structure.

Remuneration

The MFSA has confirmed that it will only apply the remuneration rules under the AIFMD’s and the European Securities and Markets Authority’s (ESMA) Guidelines to the AIFM and not to any delegate of the AIFM.

Co-operation Arrangements

The MFSA has signed co-operation arrangements with 34 non-EU securities regulators which are responsible for the supervision of AIFs, including jurisdictions such as the USA, Canada, Brazil, India, Switzerland, Australia, Hong Kong and Singapore. ESMA negotiated the agreements on behalf of all 27 EU Member State securities regulators and is co-ordinating the finalisation of the process.

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ADVOCATES

The MFSA is also in the process of uploading an FAQ on Malta's implementation of AIFMD and guide to establishing AIFMs in Malta each of which will be able from the MFSA's dedicated AIFMD page: which can be accessed by [clicking here](#).

For more information on this topic please feel free to contact us. You can also access the full MFSA statement on AIFMD by [clicking here](#).